

**Calaveras Superior Court**  
**Civil Law & Motion Calendar Tentative Rulings**  
**Friday, January 10, 2020**  
**Hon. David M. Sanders, Courtroom #2**

9:00 AM	13CV39159	Plaintiff's Motion for Leave to File Lis Pendens	03/13/2013
Ptff/Pet:	Lemke, John F.		Atty: Declue Law Group
Def/Res:	Loancity Inc.; etal		Atty: Severson & Werson; Barrett Daffin Frappier Treder & Weiss

Tentative Ruling: On March 13, 2013, plaintiff filed the Complaint. On April 8, 2015, Judgment was entered for defendants. On June 3, 2015, plaintiff filed a Notice of Appeal that is still pending. Plaintiff filed this motion on December 11, 2019.

Plaintiff has not complied with Local Rule 3.3.7 enacted January 1, 2018, by failing to include the mandatory language in the notice of motion regarding the Court's tentative ruling system. Pursuant to said local rule, lack of compliance provides a specific ground to deny any such procedurally-deficient motion. Based solely upon plaintiff's failure to comply with Local Rule 3.3.7, plaintiff's motion would be DENIED without prejudice.

However, in the interests of justice and judicial economy, the Court reaches the merits. Plaintiff's request for judicial notice as to Exhibits 1 through 4 and defendants' request for judicial notice as to Exhibits A through D are GRANTED pursuant to Evidence Code sections 452 and 453.

The California Supreme Court created a tort of wrongful foreclosure in Yvanova v New Century Mortgage Corporation (2016) 62 Cal.4th 919. While such a tort's remedies can include injunctively undoing the foreclosure, this Court finds that in this case because the involved property is now owned by an innocent third party that if plaintiff prevails on appeal and ultimately prevails in this suit, the only available remedy would be monetary damages. Therefore, the Court finds that while real property underlies this suit, as a practical matter, there is no real property at issue and therefore a lis pendens is inappropriate. Based on the foregoing, plaintiff's motion is DENIED.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to prepare the formal Order pursuant to Rule of Court 3.1312 in conformance with this ruling.

9:00 AM	18CV42976	Ptff's Motion For Leave to Add Cause of Action 170.6 TAS by Plaintiff	01/05/2018	01/15/2020	Case Management Conference
Ptff/Pet:	Barr, Howard Todd		Atty: Shepardson, John Arthur		
Def/Res:	County Of Calaveras		Atty: Angelo, Kilday & Kilduff		

Tentative Ruling: On January 5, 2018, plaintiff filed the Complaint. After demurrers were sustained, the Second Amended Complaint was filed 12/20/18; defendant answered on 1/24/19. Plaintiff filed this motion on 11/8/19. CCP section 576 provides in pertinent part, that "[a]ny judge, at any time before or after commencement of the trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading . . ." The Court finds plaintiff timely filed this motion as no trial date has been set.

However, the Court agrees with defendant and finds plaintiff did not comply with California Rules of Court 3.1324(b) which states that a separate declaration must accompany the motion specifying the following: the effect of the amendment, why the amendment is necessary and proper, when the facts giving rise to the amended allegations were discovered, and the reasons why the request for amendment was not made earlier. Based on the foregoing, plaintiff's motion is DENIED without prejudice.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant to prepare a formal Order pursuant to Rule of Court 3.1312 in conformance with this ruling.